

1-1 By: Harris S.B. No. 1159  
1-2 (In the Senate - Filed March 8, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 22, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 22, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1159 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of persons who repossess motor vehicles;  
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 5, Occupations Code, is  
1-14 amended by adding Chapter 902 to read as follows:

1-15 CHAPTER 902. REPOSSESSION SERVICES

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 902.001. DEFINITIONS. In this chapter:

1-18 (1) "Commission" means the Texas Commission of  
1-19 Licensing and Regulation.

1-20 (2) "Department" means the Texas Department of  
1-21 Licensing and Regulation.

1-22 (3) "Executive director" means the executive director  
1-23 of the department.

1-24 (4) "Lender" means:

1-25 (A) a state or national bank;

1-26 (B) a state or federal savings and loan  
1-27 association or savings bank;

1-28 (C) a state or federal credit union; or

1-29 (D) a person that holds a license issued under  
1-30 Chapter 348, Finance Code.

1-31 (5) "Motor vehicle" has the meaning assigned by  
1-32 Section 501.002, Transportation Code.

1-33 (6) "Repossession" means the recovery of a motor  
1-34 vehicle that has been sold or leased under a security agreement that  
1-35 contains a repossession clause by an individual authorized by the  
1-36 legal owner, lienholder, or lessor to recover the motor vehicle.

1-37 (7) "Repossession agent" means an individual who  
1-38 engages in a repossession for consideration.

1-39 (8) "Repossession company" means a business entity  
1-40 that primarily engages in the business of performing, or advertises  
1-41 that the business entity performs, repossessions for  
1-42 consideration.

1-43 Sec. 902.002. ADMINISTRATION OF CHAPTER. The department  
1-44 shall administer this chapter.

1-45 [Sections 902.003-902.050 reserved for expansion]

1-46 SUBCHAPTER B. GENERAL POWERS AND DUTIES

1-47 Sec. 902.051. RULES. The commission may adopt rules  
1-48 necessary to administer this chapter.

1-49 Sec. 902.052. FEES. The commission may by rule set fees in  
1-50 amounts reasonable and necessary to administer this chapter.

1-51 Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) The  
1-52 department shall annually prepare a directory of license holders.

1-53 (b) The department shall provide the directory to the public  
1-54 on request without charge.

1-55 (c) The department may comply with this section by  
1-56 publishing the directory online.

1-57 Sec. 902.054. INVESTIGATIONS. (a) The department may  
1-58 examine:

1-59 (1) a record maintained under this chapter; or

1-60 (2) a record or object the department determines is  
1-61 necessary to conduct a complete investigation.

1-62 (b) To administer this chapter, the department may question  
1-63 a person who:

2-1 (1) is associated with the business of a license  
2-2 holder; or  
2-3 (2) claims that the person was negatively affected by  
2-4 a violation of this chapter committed by a license holder.

2-5 Sec. 902.055. AUDIT. The department may periodically  
2-6 audit the business records of a license holder.

2-7 Sec. 902.056. ADVISORY COMMITTEE. (a) The presiding  
2-8 officer of the commission, with the commission's approval, shall  
2-9 appoint an advisory committee to advise the department in  
2-10 administering this chapter, or the commission in adopting rules  
2-11 under this chapter.

2-12 (b) A committee must include persons with experience in the  
2-13 repossession industry.

2-14 (c) The presiding officer of the commission, with the  
2-15 commission's approval, shall appoint the presiding officer of a  
2-16 committee established under this section.

2-17 [Sections 902.057-902.100 reserved for expansion]

2-18 SUBCHAPTER C. LICENSE REQUIREMENTS

2-19 Sec. 902.101. LICENSE REQUIRED. (a) Except as provided by  
2-20 Subchapter F, a person may not engage in a repossession for  
2-21 consideration unless each individual who engages in the recovery  
2-22 holds a repossession agent license.

2-23 (b) A person may not advertise that the person performs  
2-24 repossessions unless the person holds a repossession company  
2-25 license.

2-26 (c) A person may not hire a person to engage in a  
2-27 repossession unless the hired person holds a license issued under  
2-28 this chapter.

2-29 Sec. 902.102. LICENSE CLASSIFICATIONS. The department  
2-30 shall issue a repossession agent or repossession company license to  
2-31 an eligible applicant.

2-32 Sec. 902.103. LICENSE APPLICATION. (a) A license  
2-33 applicant must submit an application on a form prescribed by the  
2-34 department.

2-35 (b) The application must specify the class of license for  
2-36 which the applicant is applying.

2-37 (c) An application for a repossession agent license must be  
2-38 accompanied by:

- 2-39 (1) the application fee; and
- 2-40 (2) the examination fee.

2-41 (d) An application for a repossession company license must  
2-42 be accompanied by:

- 2-43 (1) the application fee;
- 2-44 (2) the license number of each employee who holds a  
2-45 repossession agent license; and

2-46 (3) a copy of the current sales tax permit issued to  
2-47 the applicant by the comptroller under Chapter 151, Tax Code, or, if  
2-48 the department determines that technology allows, the applicant may  
2-49 submit the applicant's tax identification number to the department  
2-50 for submission by the department to the comptroller for electronic  
2-51 verification.

2-52 (e) The department shall deny an application provided under  
2-53 Subsection (d) if the applicant's sales tax permit is canceled,  
2-54 suspended, or revoked under Subchapter F, Chapter 151, Tax Code.

2-55 Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION  
2-56 AGENT LICENSE; BACKGROUND CHECK. (a) An applicant for a  
2-57 repossession agent license must be at least 18 years old.

2-58 (b) The department shall conduct a criminal background  
2-59 check on the applicant as authorized by Chapter 411, Government  
2-60 Code.

2-61 (c) The applicant is not eligible for a license if the  
2-62 applicant has been finally convicted of a felony or misdemeanor  
2-63 that directly relates to the duties and responsibilities of the  
2-64 licensed occupation.

2-65 (d) The executive director may deny an application if the  
2-66 applicant previously held a repossession agent license and the  
2-67 license was revoked.

2-68 (e) Except as provided by Subsection (c), Chapter 53 applies  
2-69 to this chapter.

3-1 Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.  
3-2 (a) The executive director shall require an examination for a  
3-3 repossession agent license.

3-4 (b) The executive director shall prescribe the method and  
3-5 content of the examination and shall set compliance requirements  
3-6 for the examination.

3-7 (c) The examination shall be offered at least annually or  
3-8 more frequently as determined by the executive director.

3-9 (d) The examination shall be offered at various locations in  
3-10 this state as determined by the executive director.

3-11 Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the  
3-12 30th day after the date on which a person takes a licensing  
3-13 examination under this chapter, the department shall notify the  
3-14 person of the results of the examination.

3-15 (b) If the examination is graded or reviewed by a testing  
3-16 service:

3-17 (1) the department shall notify the person of the  
3-18 results of the examination not later than the 14th day after the  
3-19 date the department receives the results from the testing service;  
3-20 and

3-21 (2) if notice of the examination results will be  
3-22 delayed for longer than 90 days after the examination date, the  
3-23 department shall notify the person of the reason for the delay  
3-24 before the 90th day.

3-25 (c) The department may require a testing service to notify a  
3-26 person of the results of the person's examination.

3-27 (d) If requested in writing by a person who fails a  
3-28 licensing examination administered under this chapter, the  
3-29 department shall furnish the person with an analysis of the  
3-30 person's performance on the examination.

3-31 Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) On payment  
3-32 of the license fee, the department shall issue the appropriate  
3-33 license to an applicant who:

3-34 (1) meets the requirements of this subchapter;  
3-35 (2) provides evidence of any insurance coverage  
3-36 required by the executive director in accordance with this chapter;  
3-37 and

3-38 (3) passes the examination, if the application is for  
3-39 a repossession agent license.

3-40 (b) A license is valid for one year from the date of  
3-41 issuance.

3-42 Sec. 902.108. RULES REGARDING RENEWAL. The commission may  
3-43 adopt rules regarding the renewal of a license, including rules  
3-44 requiring confirmation of the continued eligibility of the license  
3-45 holder before renewal.

3-46 Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) A  
3-47 person who is otherwise eligible to renew a license may renew an  
3-48 unexpired license by paying the required renewal fee to the  
3-49 department before the expiration date of the license. A person  
3-50 whose license has expired may not engage in activities that require  
3-51 a license until the license has been renewed.

3-52 (b) A person whose license has been expired for 90 days or  
3-53 less may renew the license by paying to the department a renewal fee  
3-54 that is equal to 1-1/2 times the normally required renewal fee.

3-55 (c) A person whose license has been expired for more than 90  
3-56 days but less than one year may renew the license by paying to the  
3-57 department a renewal fee that is equal to two times the normally  
3-58 required renewal fee.

3-59 (d) A person whose license has been expired for one year or  
3-60 more may not renew the license. The person may obtain a new license  
3-61 by complying with the requirements and procedures, including any  
3-62 examination requirements, for obtaining an original license.

3-63 (e) A person who was licensed in this state, moved to  
3-64 another state, and is currently licensed and has been in practice in  
3-65 the other state for the two years preceding the date of application  
3-66 may obtain a new license without reexamination. The person must pay  
3-67 to the department a fee that is equal to two times the normally  
3-68 required renewal fee for the license.

3-69 (f) Not later than the 30th day before the date a person's

4-1 license is scheduled to expire, the department shall send written  
4-2 notice of the impending expiration to the person at the person's  
4-3 last known address according to the records of the department.

4-4 Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The  
4-5 commission by rule shall set bond and insurance requirements for  
4-6 license holders.

4-7 Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR  
4-8 REPOSSESSION AGENTS. (a) The commission by rule shall require  
4-9 continuing education as a condition for renewal of a repossession  
4-10 agent license.

4-11 (b) The continuing education requirements may not exceed  
4-12 four hours annually.

4-13 Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE  
4-14 APPROVAL. (a) The commission by rule shall recognize, prepare, or  
4-15 administer continuing education programs for repossession agent  
4-16 license holders.

4-17 (b) The commission by rule shall recognize and approve  
4-18 continuing education providers.

4-19 Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.  
4-20 The commission may waive any prerequisite to obtaining a license  
4-21 for an applicant after reviewing the applicant's credentials and  
4-22 determining that the applicant holds a license issued by another  
4-23 jurisdiction that has licensing requirements substantially  
4-24 equivalent to those of this state.

4-25 Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE.  
4-26 (a) The department may issue a provisional repossession agent  
4-27 license to an applicant currently licensed in another jurisdiction  
4-28 who seeks a license in this state and who:

4-29 (1) has been licensed in good standing as a  
4-30 repossession agent for at least two years in another jurisdiction,  
4-31 including a foreign country, that has licensing requirements  
4-32 substantially equivalent to the requirements of this chapter;

4-33 (2) has passed a national or other examination  
4-34 recognized by the executive director relating to repossession  
4-35 procedures and requirements; and

4-36 (3) is sponsored by a person licensed by the  
4-37 department under this chapter with whom the provisional license  
4-38 holder will practice during the time the person holds a provisional  
4-39 license.

4-40 (b) The executive director may waive the sponsorship  
4-41 requirement under Subsection (a)(3) for an applicant if the  
4-42 executive director determines that compliance with that  
4-43 subdivision would be a hardship to the applicant.

4-44 (c) A provisional license is valid until the date the  
4-45 department approves or denies the provisional license holder's  
4-46 application for a repossession agent license.

4-47 (d) The department shall issue a repossession agent license  
4-48 under this chapter to a provisional license holder if:

4-49 (1) the provisional license holder is eligible to be  
4-50 licensed under Section 902.113 or passes the part of the  
4-51 examination under Section 902.105 that relates to the applicant's  
4-52 knowledge and understanding of the laws and rules of this state  
4-53 relating to repossession; and

4-54 (2) the executive director verifies that the  
4-55 provisional license holder satisfies any other applicable  
4-56 licensing requirements under this chapter.

4-57 (e) The executive director must approve or deny a  
4-58 provisional license holder's application for a repossession agent  
4-59 license not later than the 180th day after the date on which the  
4-60 provisional license is issued. The executive director may extend  
4-61 the 180-day period if the results of an examination have not been  
4-62 received by the department before the end of that period.

4-63 (f) The commission may prescribe a fee for provisional  
4-64 licenses in an amount reasonable and necessary to cover the cost of  
4-65 issuing the license.

4-66 [Sections 902.115-902.150 reserved for expansion]  
4-67 SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY  
4-68 REQUIREMENTS

4-69 Sec. 902.151. DEFINITION. In this subchapter, "storage

5-1 facility" means the area in which a repossession company stores a  
 5-2 repossessed motor vehicle.

5-3 Sec. 902.152. OFFICE; HOURS. A repossession company shall  
 5-4 maintain a permanent office with regular office hours of at least  
 5-5 eight hours each day Monday through Friday, excluding legal  
 5-6 holidays, during which a person may claim personal property from a  
 5-7 repossessed motor vehicle.

5-8 Sec. 902.153. CUSTODY AND CONTROL OF MOTOR VEHICLE. A  
 5-9 repossession company may maintain possession of a repossessed motor  
 5-10 vehicle until the vehicle is sold at auction or otherwise  
 5-11 transferred to a person with the right to possess the vehicle.

5-12 Sec. 902.154. STORAGE OF REPOSSESSED MOTOR VEHICLE. A  
 5-13 repossession company shall store a repossessed motor vehicle inside  
 5-14 a storage facility that complies with the requirements of this  
 5-15 subchapter.

5-16 Sec. 902.155. ENCLOSURE AND SECURITY AT FACILITY.

5-17 (a) Each storage facility must be:

5-18 (1) completely enclosed by a fence at least six feet  
 5-19 high; and

5-20 (2) locked when the license holder or an employee of  
 5-21 the license holder is not at the facility.

5-22 (b) A repossession company shall secure a repossessed motor  
 5-23 vehicle to prevent theft of the vehicle and its contents, including  
 5-24 locking doors, closing windows and hatchbacks, and raising or  
 5-25 covering convertible tops.

5-26 Sec. 902.156. FACILITY SURFACE. A storage facility must  
 5-27 contain an all-weather surface such as concrete, asphalt, blacktop,  
 5-28 stone, macadam, limestone, iron ore, gravel, shell, or caliche.  
 5-29 The surface must enable the safe and effective movement of the  
 5-30 vehicle on all portions of the lot, both under the vehicle's own  
 5-31 power and under tow, at all times and regardless of weather  
 5-32 conditions.

5-33 Sec. 902.157. FACILITY LIGHTING. A repossession company  
 5-34 shall maintain lighting at the storage facility sufficient to allow  
 5-35 inspection of a repossessed motor vehicle for damage at the time of  
 5-36 the vehicle's release, including at least a 250-watt light bulb for  
 5-37 each quarter acre of storage area.

5-38 Sec. 902.158. FACILITY SIGNS. A repossession company shall  
 5-39 post a clearly visible and readable sign at the storage facility's  
 5-40 main entrance. The sign must:

5-41 (1) use letters at least two inches in height, with  
 5-42 contrasting background;

5-43 (2) be visible from at least 10 feet;

5-44 (3) contain the street address of the facility; and

5-45 (4) contain the repossession company's name, address,  
 5-46 telephone number, office hours, and license number.

5-47 Sec. 902.159. SHARING OF STORAGE FACILITY PROHIBITED. A  
 5-48 repossession company may not share a storage facility with another  
 5-49 repossession company, unless each company is owned by the same  
 5-50 person.

5-51 Sec. 902.160. ENTRY OF TOW TRUCKS. A repossession company  
 5-52 may not permit a tow truck to enter its storage facility unless the  
 5-53 tow truck is registered under Chapter 643, Transportation Code.

5-54 [Sections 902.161-902.200 reserved for expansion]

5-55 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

5-56 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A  
 5-57 repossession agent may not engage in a repossession unless the tow  
 5-58 truck used by the agent complies with:

5-59 (1) commission rules regarding safety; and

5-60 (2) all other applicable local, state, and federal  
 5-61 rules and laws, including Subchapter E, Chapter 643, Transportation  
 5-62 Code, and rules adopted under that subchapter.

5-63 Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. A  
 5-64 repossession agent may not use force or breach the peace when  
 5-65 engaging in a repossession.

5-66 Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT.

5-67 (a) A licensed repossession agent may not engage in a repossession  
 5-68 unless the agent is hired or employed by a licensed repossession  
 5-69 company or a lender.

6-1 (b) A person may not hire or employ a licensed repossession  
6-2 agent unless the person is a licensed repossession company or a  
6-3 lender.

6-4 Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW  
6-5 ENFORCEMENT. Not later than two hours after engaging in a  
6-6 repossession, a repossession agent shall report the repossession to  
6-7 the police department of the municipality in which the recovery  
6-8 occurred or, if the recovery was not in a municipality having a  
6-9 police department, to the sheriff of the county in which the  
6-10 recovery occurred. The report must include:

6-11 (1) the license number and telephone number of each  
6-12 repossession agent engaging in the repossession;

6-13 (2) the location at which the repossession occurred  
6-14 and the location at which the motor vehicle is stored; and

6-15 (3) a description of the motor vehicle recovered,  
6-16 including identification information such as a vehicle  
6-17 identification number and the state and number of a license plate.

6-18 Sec. 902.205. RETAIL SERVICES PROHIBITED. A repossession  
6-19 agent may not sell the agent's repossession services directly to  
6-20 the public.

6-21 Sec. 902.206. COLLECTION OF MONEY PROHIBITED. A  
6-22 repossession agent may not accept an assignment to collect money.

6-23 [Sections 902.207-902.250 reserved for expansion]

6-24 SUBCHAPTER F. ADDITIONAL REPOSSESSION AND STORAGE REQUIREMENTS FOR  
6-25 MOTOR VEHICLE DEALERS AND LENDERS

6-26 Sec. 902.251. DEFINITION. In this subchapter, "dealer"  
6-27 means a person who holds a general distinguishing number issued by  
6-28 the Motor Vehicle Board of the Texas Department of Transportation  
6-29 under Chapter 503, Transportation Code.

6-30 Sec. 902.252. LICENSE NOT REQUIRED FOR CERTAIN  
6-31 REPOSSESSIONS BY MOTOR VEHICLE DEALERS OR LENDERS. A repossession  
6-32 agent who is not licensed may engage in a repossession if the person  
6-33 is employed by:

6-34 (1) a lender who has received less than 20 motor  
6-35 vehicles by repossession in the calendar year; or

6-36 (2) a dealer or lender, if:

6-37 (A) the person who has custody or control of the  
6-38 motor vehicle agrees to the repossession;

6-39 (B) a tow truck is not used for the repossession;

6-40 and

6-41 (C) the motor vehicle moves under its own power  
6-42 and meets all required safety standards.

6-43 Sec. 902.253. STORAGE OF REPOSSESSED MOTOR VEHICLE. (a) A  
6-44 dealer or lender may store a motor vehicle repossessed under this  
6-45 subchapter on the property of the dealer or lender.

6-46 (b) Before storing the motor vehicle, the dealer or lender  
6-47 must inventory the personal property in the vehicle.

6-48 (c) A licensed repossession agent hired or employed by a  
6-49 lender may store a motor vehicle on the lender's property after  
6-50 engaging in a repossession for the lender.

6-51 [Sections 902.254-902.300 reserved for expansion]

6-52 SUBCHAPTER G. ENFORCEMENT

6-53 Sec. 902.301. CEASE AND DESIST ORDERS. The department may  
6-54 issue a cease and desist order.

6-55 Sec. 902.302. CIVIL PENALTIES. (a) Except as provided by  
6-56 Subsection (b), a person who violates this chapter is subject to a  
6-57 civil penalty under Section 51.352 of not less than \$2,000 for the  
6-58 first violation and not less than \$4,000 for each subsequent  
6-59 violation.

6-60 (b) A repossession company or lender who violates this  
6-61 chapter is subject to a civil penalty of not less than \$4,000 for  
6-62 the first violation and not less than \$8,000 for each subsequent  
6-63 violation.

6-64 Sec. 902.303. CRIMINAL PENALTY. (a) A person commits an  
6-65 offense if the person knowingly engages in a repossession without  
6-66 holding a license issued under this chapter.

6-67 (b) Each repossession of a motor vehicle constitutes a  
6-68 separate offense.

6-69 (c) An offense under this section is a Class B misdemeanor.

7-1 SECTION 2. (a) A person is not required to obtain a license  
7-2 under Subchapter C, Chapter 902, Occupations Code, as added by this  
7-3 Act, until September 1, 2006.

7-4 (b) The Texas Commission of Licensing and Regulation shall  
7-5 adopt rules as required by Chapter 902, Occupations Code, as added  
7-6 by this Act, not later than June 1, 2006.

7-7 SECTION 3. (a) Except as provided by Subsection (b) of  
7-8 this section, this Act takes effect September 1, 2005.

7-9 (b) Section 902.101 and Subchapters D, E, F, and G, Chapter  
7-10 902, Occupations Code, as added by this Act, take effect September  
7-11 1, 2006.

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